

REMARKS

This supplemental amendment is further in response to an Office Action mailed July 5, 2002. Claims 1, 4-6, 8, 13, 16-18, 20, 21, 35, 40-50 were rejected under 35 U.S.C. §102(b) as being anticipated by published application WO 9318802 (Peterson). In addition, claims 3, 7, 19, 22, 23, 34 and 37-39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Peterson in view of Voss et al.

Herein, claim 37 has been amended to include limitations from claim 39. Applicant respectfully submits that neither a prima facie case of anticipation nor obviousness has been established, simply due to the fact that the claimed invention is distinguishable on its face for the fluid flow and pressure control system of Peterson.

A. §102(b) Rejection

As the Examiner is aware, “a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Herein, Peterson does not describe or even suggest a chamber for storage of pressurized fluid and the supply of such pressurized fluid in response to an event. As set forth in some of the pending independent claims, the event is an adjustment of speed of the pump. The storage and supply limitations are set forth in the following independent claims: claim 1 (lines 8-10); claim 13 (lines 9-11); claim 37 (lines 7-10); claim 41 (lines 6-11); and claim 48 (lines 4-9).

Moreover, it is noted that the volume sensor (13) of Peterson should not be construed as equivalent to the pressure transducer as claimed. For Peterson, in response to capacitive

measurements of electrode plates 37 and 39 by a volume sensor (13), the computer (17) detects a change of volume and activates the pressure controller (29) to reduce/increase the absolute pressure in chamber (7). This reduction/increase of pressure in chamber (7) is communicated to the other chamber (9), causing increased/decreased fluid flow to the hand piece. The volume sensor (13) of Peterson is not in fluid communications with a chamber (7) of the accumulator (3) and is not adapted to detect (or monitor/sense) the change of fluid pressure as set forth in independent claim 1 (lines 11-13), independent claim 13 (lines 12-14), independent claim 35 (lines 4-5) and independent claim 48 (lines 10-12).

Yet another distinguishing factor associated with claim 37 is the presence of a second accumulator in fluid communication with the second chamber of the first accumulator. The second accumulator is configured to reduce the sensitivity of the first accumulator and allow greater volume of irrigation fluid to be stored in the first chamber of the first accumulator.

Hence, the §102(b) rejection should be withdrawn for independent claims 1, 13, 35, 37, 41 and 48 and those claims dependent thereon.

B. §103(a) Rejection

Applicant notes that when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. *See In re Fine*, 873 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Herein, neither Peterson nor Voss, alone or in combination, describe or even suggest the accumulator (3) having a chamber for storage of pressurized fluid or the supply of such pressurized fluid in response to an event as set forth above. With respect to claim 37 in particular, neither Peterson nor Voss, describe or even suggest two accumulators

as now claimed. For this reason alone, independent claims 1, 13, 37, 41 and 48 and those claims dependent thereon are allowable.

It is further noted that these claimed limitations addresses problems with control the flow of irrigation fluid through the irrigation line. It is our understanding that these cited references fail to describe or identify this problem and the need for storage of pressurized fluid and the supply of such fluid in response to an event. The Examiner is reminded of the historic case of *Eibel Process Co. v. Minnesota & Ontario Paper Co.*, 261 U.S. 45 (1923) that established the rule that the discovery of the source of a problem may result in a patentable invention despite the fact that the solution would have been obvious once the source of the problem was discovered. Thus, Applicant respectfully requests the Examiner to identify the discovery of the source of the problem overcome by the claimed invention within the cited references if the §103 rejection is maintained.

Moreover, as another distinction that it not suggested by the combination of Peterson and Voss, it is noted that the pressure controller (29) of Peterson is merely a capacitive controller that is *not* in fluid communications with a chamber of the accumulator (3) and is not adapted to detect (or monitor/sense) the change of fluid pressure. These limitations are further set forth in independent claim 1, 13, 35 and 48. Hence, withdrawal of the §103(a) rejection is respectfully requested.

These illustrative examples are only some of the distinctions between the claimed invention and the fluid flow and pressure control system of Peterson. These distinctions are raised in the supplemental amendment in order to heighten some distinctions as the Examiner is reconsidering the allowability of the pending claims. The Examiner is invited to contact

the undersigned attorney at the telephone number listed below if such discussions would facilitate prosecution of the above-identified patent application.

VERSION SHOWING MARKED CHANGES TO THE APPLICATION

1 37. (Currently Amended) An apparatus comprising:
2 an irrigation pump;
3 an irrigation line in fluid communication with the irrigation pump;
4 a first pressure sensor in fluid communication with the irrigation line;
5 an aspiration line; and,
6 a first accumulator located between the irrigation line and the first pressure sensor,
7 the first accumulator including a first chamber in fluid communication with the irrigation line
8 temporarily to provide stored pressurized fluid in response to dislodgment of an occlusion of
9 the aspiration line after the occlusion has already caused a substantially reduced speed of the
10 irrigation pump, a second chamber in fluid communication with the first pressure sensor and
11 a flexible membrane which separates the first and the second chamber; and
12 a second accumulator in fluid communication with the second chamber.

1 39. (Cancelled)

CONCLUSION

In view of the foregoing, Applicants contend that the pending claims are in condition for allowance and respectfully request the Examiner to reconsider these claims. Allowance of these claims at Examiner's earliest convenience is respectfully solicited.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP


Dated: March 12, 2003

~~WILLIAM W. SCHAAL~~
~~Reg. No. 39,018~~

CERTIFICATE OF MAILING

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, California 90025
(714) 557-3800

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20231 on: March 12, 2003

 Corrin R. Reynolds 03/12/03
 Date